

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 487

Introduced by Senator Calderon

February 21, 2013

An act to amend Sections 3700.1, 3701, 3701.3, 3701.5, 3701.7, 3701.8, 3702, 3702.5, 3702.8, 3702.10, 3741, 3742, 3744, 3745, and 3746 of, to amend, renumber, and add Section 3740 to, to amend, repeal, and add Section 3743 to, and to add Sections 3701.85 and 3742.5 to, the Labor Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 487, as amended, Calderon. Workers' compensation insurance: Self-Insured Group Security Fund.

Existing law generally requires an employer to compensate, without regard to negligence, an employee for an injury sustained by the employee if the injury arose out of, and in the course of, employment, as specified.

Existing law requires each employer, except as specified, to secure the payment of compensation by either being insured against liability to pay compensation, or by securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers. Existing law establishes the Self-Insurers' Security Fund, governed by an 8-member board of trustees and administered by the Director of Industrial Relations, to provide for the continuation of workers' compensation benefits delayed as a result of the failure of a private, self-insured employer to meet its compensation obligations when the employer's security deposit is either inadequate or not immediately accessible for

the payment of benefits. Existing law requires every private, self-insuring employer to secure incurred liabilities for the payment of workers' compensation by making a deposit based on estimated future liability for compensation. Existing law authorizes an alternative security system established by regulations adopted by the director whereby private insurers can collectively secure their aggregate liabilities, as specified.

This bill would distinguish between individual self-insured employers and groups of self-insured employers by creating a separate Self-Insured Group Security Fund for group self-insured employers that is similar to the existing Self-Insurers' Security Fund structure, which would continue, but only for individual self-insured employers. The bill would authorize a similar alternative security system to be established by regulations adopted by the director whereby group self-insured employers may collectively secure their aggregate liabilities, as specified. The bill would establish the Self-Insured Group Security Fund as a nonprofit mutual benefit corporation, governed by a 7-member board of trustees, and provide similar powers and authority as is provided to the existing Self-Insurers' Security Fund. The bill would make additional conforming changes. The bill would state the intent of the Legislature in this regard.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3700.1 of the Labor Code is amended to
- 2 read:
- 3 3700.1. As used in this article:
- 4 (a) "Director" means the Director of Industrial Relations.
- 5 (b) "Fund" means the Self-Insurers' Security Fund established
- 6 pursuant to Section 3742.
- 7 (c) "Fund member" means a stand-alone self-insured employer
- 8 which participates in the Self-Insurers' Security Fund.
- 9 (d) "Fund trustees" means the Board of Trustees of the
- 10 Self-Insurers' Security Fund.
- 11 (e) "Incurred liabilities for the payment of compensation" means
- 12 the sum of an estimate of future compensation, as compensation
- 13 is defined by Section 3207, plus an estimate of the amount

1 necessary to provide for the administration of claims, including
2 legal costs.

3 (f) “Insolvent self-insurer” means a stand-alone self-insured
4 employer whose certificate of consent to self-insure has been
5 revoked by the director or whose security deposit has been used
6 by the director pursuant to Section 3701.5.

7 (g) “Insolvent SIG” means a SIG whose certificate of consent
8 to self-insure has been revoked by the director, which has failed
9 to pay compensation, or whose security deposit has been used by
10 the director pursuant to Section 3701.5.

11 (h) “Private self-insurer” and “private self-insured employer”
12 mean any employer that has been issued a certificate of consent
13 to self-insure by the director, whether as a stand-alone self-insured
14 employer or as a member of a SIG which has secured the payment
15 of compensation pursuant to subdivision (b) of Section 3700.

16 (i) “SIG” means a nonprofit mutual benefit corporation to which
17 a group of private self-insured employers have transferred primary
18 liability for their workers’ compensation obligations and has
19 secured the payment of compensation pursuant to subdivision (b)
20 of Section 3700.

21 (j) “SIG Fund” means the Self-Insured Group Security Fund
22 established pursuant to Section 3742.5.

23 (k) “SIG Fund Member” means a SIG which participates in the
24 SIG Fund.

25 (l) “SIG Fund Trustees” means the Board of Trustees of the
26 SIG Fund.

27 (m) “Stand-alone self-insured employer” and “stand-alone
28 self-insured” mean a private employer that retains primary liability
29 for its own worker’s compensation obligations, whether alone or
30 in connection with guarantors, and has secured the payment of
31 compensation pursuant to subdivision (b) of Section 3700.

32 SEC. 2. Section 3701 of the Labor Code is amended to read:

33 3701. (a) Each year every private self-insuring employer shall
34 secure incurred liabilities for the payment of compensation and
35 the performance of the obligations of employers imposed under
36 this chapter by renewing the prior year’s security deposit or by
37 making a new deposit of security. If a new deposit is made, it shall
38 be posted within 60 days of the filing of the self-insured employer’s
39 annual report with the director, but in no event later than May 1.

1 (b) The solvency risk and security deposit amount for each
2 stand-alone self-insured employer shall be acceptable to the
3 Self-Insurers' Security Fund.

4 (c) Unless otherwise permitted by regulation, the deposit shall
5 be an amount equal to the self-insurer's projected losses, net of
6 specific excess insurance coverage, if any, and inclusive of incurred
7 but not reported (IBNR) liabilities, allocated loss adjustment
8 expense, and unallocated loss adjustment expense, calculated as
9 of December 31 of each year. The calculation of projected losses
10 and expenses shall be reflected in a written actuarial report that
11 projects ultimate liabilities of the private self-insured employer at
12 the expected actuarial confidence level, to ensure that all claims
13 and associated costs are recognized. The written actuarial report
14 shall be prepared by an actuary meeting the qualifications
15 prescribed by the director in regulation.

16 (d) In determining the amount of the deposit required to secure
17 incurred liabilities for the payment of compensation and the
18 performance of obligations of a self-insured employer imposed
19 under this chapter, the director shall offset estimated future
20 liabilities for the same claims covered by a self-insured plan under
21 the federal Longshore and Harbor Workers' Compensation Act
22 (33 U.S.C. Sec. 901 et seq.), but in no event shall the offset exceed
23 the estimated future liabilities for the claims under this chapter.

24 (e) The director may only accept as security, and the employer
25 shall deposit as security, cash, securities, surety bonds, or
26 irrevocable letters of credit in any combination the director, in his
27 or her discretion, deems adequate security. The current deposit
28 shall include any amounts covered by terminated surety bonds or
29 excess insurance policies, as shall be set forth in regulations
30 adopted by the director pursuant to Section 3702.10.

31 (f) Surety bonds, irrevocable letters of credit, and documents
32 showing issuance of any irrevocable letter of credit shall be
33 deposited with, and be in a form approved by, the director, shall
34 be exonerated only according to its terms and, in no event, by the
35 posting of additional security.

36 (g) The director may accept as security a joint security deposit
37 that secures an employer's obligation under this chapter and that
38 also secures that employer's obligations under the federal
39 Longshore and Harbor Workers' Compensation Act.

1 (h) The liability of the Self-Insurers' Security Fund and the SIG
2 Fund, with respect to any claims brought under both this chapter
3 and under the federal Longshore and Harbor Workers'
4 Compensation Act, to pay for shortfalls in a security deposit shall
5 be limited to the amount of claim liability owing the employee
6 under this chapter offset by the amount of any claim liability owing
7 under the federal Longshore and Harbor Workers' Compensation
8 Act, but in no event shall the liability of the fund exceed the claim
9 liability under this chapter. The employee shall be entitled to pursue
10 recovery under either or both the state and federal programs.

11 (i) Securities shall be deposited on behalf of the director by the
12 self-insured employer with the Treasurer. Securities shall be
13 accepted by the Treasurer for deposit and shall be withdrawn only
14 upon written order of the director.

15 (j) Cash shall be deposited in a financial institution approved
16 by the director, and in the account assigned to the director. Cash
17 shall be withdrawn only upon written order of the director.

18 (k) Upon the sending by the director of a request to renew,
19 request to post, or request to increase or decrease a security deposit,
20 a perfected security interest is created in the private self-insured's
21 assets in favor of the director and, in the case of a stand-alone
22 self-insured employer the Self-Insurers' Security Fund, or in the
23 case of a SIG the SIG Fund, to the extent of any then unsecured
24 portion of the self-insured's incurred liabilities. That perfected
25 security interest is transferred to any cash or securities thereafter
26 posted by the private self-insured with the director and is released
27 only upon either of the following:

28 (1) The acceptance by the director of a surety bond or
29 irrevocable letter of credit for the full amount of the incurred
30 liabilities for the payment of compensation.

31 (2) The return of cash or securities by the director.

32 (l) The private self-insured employer loses all right, title, and
33 interest in, and any right to control, all assets or obligations posted
34 or left on deposit as security. The director may liquidate the deposit
35 as provided in Section 3701.5 and apply it to the self-insured
36 employer's incurred liabilities either directly or through the
37 Self-Insurers' Security Fund or through the SIG Fund.

38 (m) The solvency risk and security deposit amount for each SIG
39 shall be acceptable to the SIG Fund.

40 SEC. 3. Section 3701.3 of the Labor Code is amended to read:

1 3701.3. The director shall return to a private self-insured
2 employer all individual security determined, with the consent of
3 the Self-Insurers' Security Fund (SISF) in the case of a stand-alone
4 self-insured employer or the consent of the SIG Fund in the case
5 of a SIG, to be in excess of that needed to assure the administration
6 of the employer's self insuring, including legal fees, and the
7 payment of any future claims. This section shall not apply to any
8 security posted as part of the SISF alternate composite deposit,
9 the SIG alternate composite deposit, or to any security turned over
10 to the Self-Insurers' Security Fund or the SIG Fund following an
11 order of default under Section 3701.5.

12 SEC. 4. Section 3701.5 of the Labor Code is amended to read:

13 3701.5. (a) If the director determines that a private self-insured
14 employer has failed to pay workers' compensation as required by
15 this division, the security deposit shall be utilized to administer
16 and pay the employer's compensation obligations.

17 (b) If the director determines the security deposit has not been
18 immediately made available for the payment of compensation, the
19 director shall determine the method of payment and claims
20 administration as appropriate, which may include, but is not limited
21 to, payment by a surety that issued the bond, or payment by an
22 issuer of an irrevocable letter of credit, and administration by a
23 surety or by an adjusting agency, through the Self-Insurers'
24 Security Fund, or the SIG Fund, or any combination thereof. If the
25 director arranges for administration and payment by any person
26 other than the Self-Insurers' Security Fund or the SIG Fund after
27 a default is declared, the fund and the SIG Fund shall have no
28 responsibility for claims administration or payment of the claims.

29 (c) (1) If the director determines the payment of benefits and
30 claims administration shall be made through either the
31 Self-Insurers' Security Fund or the SIG Fund, the fund shall
32 commence payment of the private self-insured employer's
33 obligations for which it is liable under Section 3743 within 30 days
34 of notification. Payments shall be made to claimants whose
35 entitlement to benefits can be ascertained by the fund or the SIG
36 Fund, with or without proceedings before the appeals board. Upon
37 the assumption of obligations by the fund or the SIG Fund pursuant
38 to the director's determination, the fund or the SIG Fund shall have
39 a right to immediate possession of any posted security and the
40 custodian, surety, or issuer of any irrevocable letter of credit shall

1 turn over the security to the fund or the SIG Fund together with
2 the interest that has accrued since the date of the self-insured
3 employer's default or insolvency.

4 (2) The director shall promptly audit a self-insured employer
5 upon making a determination under subdivision (a) or (b). The
6 employer, any excess insurer, and any adjusting agency shall
7 provide any relevant information in their possession. If the audit
8 results in a preliminary estimate that liabilities exceed the amount
9 of the security deposit, the director shall direct the custodian of
10 the security deposit to liquidate it and provide all proceeds to the
11 Self-Insurers' Security Fund in the case of a stand-alone self-insurer
12 or the SIG Fund in the case of a SIG. If the preliminary estimate
13 is that liabilities are less than the security deposit, the director shall
14 ensure the administration and payment of compensation pursuant
15 to subdivision (b).

16 (d) The payment of benefits by the Self-Insurers' Security Fund
17 or the SIG Fund from security deposit proceeds shall release and
18 discharge any custodian of the security deposit, surety, any issuer
19 of a letter of credit, and the self-insured employer, from liability
20 to fulfill obligations to provide those same benefits as
21 compensation, but does not release any person from any liability
22 to the fund for full reimbursement. Payment by a surety constitutes
23 a full release of the surety's liability under the bond to the extent
24 of that payment, and entitles the surety to full reimbursement by
25 the principal or his or her estate. Full reimbursement includes
26 necessary attorney fees and other costs and expenses, without prior
27 claim or proceedings on the part of the injured employee or other
28 beneficiaries. Any decision or determination made, or any
29 settlement approved, by the director or by the appeals board under
30 subdivision (f) shall conclusively be presumed valid and binding
31 as to any and all known claims arising out of the underlying
32 dispute, unless an appeal is made within the time limit specified
33 in Section 5950.

34 (e) The director shall advise the Self-Insurers' Security Fund
35 or the SIG Fund promptly after receipt of information indicating
36 that a private self-insured employer may be unable to meet its
37 compensation obligations. The director shall also advise the
38 Self-Insurers' Security Fund or the SIG Fund of all determinations
39 and directives made or issued pursuant to this section. All financial,
40 actuarial, or claims information received by the director from any

1 self-insurer may be shared by the director with the Self-Insurers'
2 Security Fund and the SIG Fund.

3 (f) Disputes concerning the posting, renewal, termination,
4 exoneration, or return of all or any portion of the security deposit,
5 or any liability arising out of the posting or failure to post security,
6 or adequacy of the security or reasonableness of administrative
7 costs, including legal fees, and arising between or among a surety,
8 the issuer of an agreement of assumption and guarantee of workers'
9 compensation liabilities, the issuer of a letter of credit, any
10 custodian of the security deposit, a self-insured employer, the
11 Self-Insurers' Security Fund, or the SIG Fund shall be resolved
12 by the director. An appeal from the director's decision or
13 determination may be taken to the appropriate superior court by
14 petition for writ of mandate. Payment of claims from the security
15 deposit or by the Self-Insurers' Security Fund shall not be stayed
16 pending the resolution of the disputes unless and until the superior
17 court issues a determination staying a payment of claims decision
18 or determination of the director.

19 SEC. 5. Section 3701.7 of the Labor Code is amended to read:

20 3701.7. Where any employer requesting coverage under a new
21 or existing certificate of consent to self-insure has had a period of
22 unlawful uninsurance, either for an applicant in its entirety or for
23 a subsidiary or member of a joint powers authority legally
24 responsible for its own workers' compensation obligations, the
25 following special conditions shall apply before the director may
26 determine if the requesting employer can operate under a certificate
27 of consent to self-insure:

28 (a) The director may require a deposit of not less than 200
29 percent of the outstanding liabilities remaining unpaid at the time
30 of application, which had been incurred during the uninsurance
31 period.

32 (b) At the discretion of the director, where a public or private
33 employer has been previously totally uninsured for workers'
34 compensation pursuant to Section 3700, the director may require
35 an additional deposit not to exceed 100 percent of the total
36 outstanding liabilities for the uninsured period, or the sum of two
37 hundred fifty thousand dollars (\$250,000), whichever is greater.

38 (c) In addition to the deposits required by subdivisions (a) and
39 (b), a penalty shall be paid to the Uninsured Employers Fund of
40 10 percent per year of the remaining unpaid liabilities, for every

1 year liabilities remain outstanding. In addition, an additional
2 application fee, not to exceed one thousand dollars (\$1,000), plus
3 assessments, pursuant to Section 3702.5 and subdivision (b) of
4 Section 3745, may be imposed by the director and the
5 Self-Insurers' Security Fund against a stand-alone self-insured
6 employer, or the director and the SIG Fund against a SIG.

7 (d) A certificate of consent to self-insure shall not be granted
8 to an applicant that has had a period of unlawful uninsurance
9 without the written approval of the Self-Insurers' Security Fund
10 in the case of a self-insured stand-alone employer or the SIG Fund
11 in the case of a SIG.

12 (e) An employer may retrospectively insure the outstanding
13 liabilities arising out of the uninsured period, either before or after
14 an application for self-insurance has been approved. Upon proof
15 of insurance acceptable to the director, no deposit shall be required
16 for the period of uninsurance.

17 The penalties to be paid to the Uninsured Employers Fund shall
18 consist of a one-time payment of 20 percent of the outstanding
19 liabilities for the period of uninsurance remaining unpaid at the
20 time of application, in lieu of any other penalty for being
21 unlawfully uninsured pursuant to this code.

22 (f) In the case of a subsidiary which meets all of the following
23 conditions, a certificate shall issue without penalty:

24 (1) The subsidiary has never had a certificate revoked for reasons
25 set forth in Section 3702.

26 (2) Employee injuries were reported to the Office of
27 Self-Insurance Plans in annual reports.

28 (3) The security deposit of the certificate holder was calculated
29 to include the entity's compensation liabilities.

30 (4) Application for a separate certificate or corrected certificate
31 is made within 90 days and completed within 180 days of notice
32 from the Office of Self-Insurance Plans. If the requirements of this
33 subdivision are not met, all penalties pursuant to subdivision (b)
34 of Section 3702.9 shall apply.

35 (g) The director may approve an application on the date the
36 application is substantially completed, subject to completion
37 requirements, and may make the certificate effective on an earlier
38 date, covering a period of uninsurance, if the employer complies
39 with the requirements of this section.

1 (h) Any decision by the director may be contested by an entity
2 in the manner provided in Section 3701.5.

3 (i) Nothing in this section shall abrogate the right of an employee
4 to bring an action against an uninsured employer pursuant to
5 Section 3706.

6 (j) Nothing in this statute shall abrogate the right of a
7 self-insured employer to insure against known or unknown claims
8 arising out of the self-insurance period.

9 SEC. 6. Section 3701.8 of the Labor Code is amended to read:

10 3701.8. (a) As an alternative to each private self-insuring
11 employer securing its own incurred liabilities as provided in
12 Section 3701, the director may provide by regulation for an
13 alternative security system whereby all stand-alone self-insured
14 employers designated for full participation by the director shall
15 collectively secure their aggregate incurred liabilities through the
16 Self-Insurers' Security Fund, which shall be known as the SISF
17 Alternate Composite Deposit Program. The regulations shall
18 provide for the director to set a total security requirement for these
19 participating stand-alone self-insured employers in the SISF
20 Alternate Composite Deposit Program based on a review of their
21 annual reports and any other self-insurer information as may be
22 specified by the director. The Self-Insurers' Security Fund shall
23 propose to the director a combination of cash and securities, surety
24 bonds, irrevocable letters of credit, insurance, or other financial
25 instruments or guarantees satisfactory to the director sufficient to
26 meet the security requirement set by the director. Upon approval
27 by the director and posting by the Self-Insurers' Security Fund on
28 or before the date set by the director, that combination shall be the
29 SISF alternate composite deposit. The noncash elements of the
30 SISF Alternate Composite Deposit Program may be one-year or
31 multiple-year instruments. If the Self-Insurers' Security Fund fails
32 to post the required composite deposit by the date set by the
33 director, then within 30 days after that date, each private
34 stand-alone self-insuring employer shall secure its incurred
35 liabilities in the manner required by Section 3701. Self-insured
36 employers not designated for full participation by the director shall
37 meet all requirements as may be set by the director pursuant to
38 subdivision (g).

39 (b) In order to provide for the SISF alternate composite deposit
40 approved by the director, the Self-Insurers' Security Fund shall

1 assess, in a manner approved by the director, each fully
2 participating private stand-alone self-insuring employer a deposit
3 assessment payable within 30 days of assessment. The amount of
4 the deposit assessment charged each fully participating stand-alone
5 self-insured employer shall be set by the Self-Insurers' Security
6 Fund, based on its reasonable consideration of all the following
7 factors:

8 (1) The total amount needed to provide the SISF alternate
9 composite deposit.

10 (2) The stand-alone self-insuring employer's paid or incurred
11 liabilities as reflected in its annual report.

12 (3) The financial strength and creditworthiness of the stand-alone
13 self-insured.

14 (4) Any other reasonable factors as may be authorized by
15 regulation.

16 (5) In order to make a SISF alternate composite deposit proposal
17 to the director and set the deposit assessment to be charged each
18 fully participating stand-alone self-insured, the Self-Insurers'
19 Security Fund shall have access to the annual reports and other
20 information submitted by all stand-alone self-insuring employers
21 to the director, under terms and conditions as may be set by the
22 director, to preserve the confidentiality of the stand-alone
23 self-insured's financial information.

24 (c) Upon payment of the deposit assessment and except as
25 provided herein, the stand-alone self-insuring employer loses all
26 right, title, and interest in the deposit assessment. To the extent
27 that in any one year the deposit assessment paid by stand-alone
28 self-insurers is not exhausted in the purchase of securities, surety
29 bonds, irrevocable letters of credit, insurance, or other financial
30 instruments to post with the director as part of the SISF alternate
31 composite deposit, the surplus shall remain posted with the director,
32 and the principal and interest earned on that surplus shall remain
33 as part of the SISF alternate composite deposit in subsequent years.
34 In the event that in any one year the Self-Insurers' Security Fund
35 fails to post the required SISF alternate composite deposit by the
36 date set the by the director, and the director requires each private
37 SISF alternate self-insuring employer to secure its incurred
38 liabilities in the manner required by Section 3701, then any deposit
39 assessment paid in that year shall be refunded to the stand-alone
40 self-insuring employer that paid the deposit assessment.

1 (d) If any private stand-alone self-insuring employer objects to
2 the calculation, posting, or any other aspect of its deposit
3 assessment, upon payment of the assessment in the time provided,
4 the employer shall have the right to appeal the assessment to the
5 director, who shall have exclusive jurisdiction over this dispute.
6 If any private stand-alone self-insuring employer fails to pay the
7 deposit assessment in the time provided, the director shall order
8 the stand-alone self-insuring employer to pay a penalty of not less
9 than 10 percent of its deposit assessment, plus interest on any
10 unpaid amount at the prejudgment rate, and to post a separate
11 security deposit in the manner provided by Section 3701. The
12 penalty and interest shall be paid directly to the Self-Insurers'
13 Security Fund. The director may also revoke the certificate of
14 consent to self-insure of any stand-alone self-insuring employer
15 who fails to pay the deposit assessment in the time provided.

16 (e) Upon the posting by the Self-Insurers' Security Fund of the
17 SISF alternate composite deposit with the director, the deposit
18 shall be held until the director determines that a private stand-alone
19 self-insured employer has failed to pay workers' compensation as
20 required by this division, and the director orders the Self-Insurers'
21 Security Fund to commence payment. Upon ordering the
22 Self-Insurers' Security Fund to commence payment, the director
23 shall make available to the fund that portion of the SISF alternate
24 composite deposit necessary to pay the workers' compensation
25 benefits of the defaulting stand-alone self-insuring employer. In
26 the event additional funds are needed in subsequent years to pay
27 the workers' compensation benefits of any self-insuring employer
28 who defaulted in earlier years, the director shall make available
29 to the Self-Insurers' Security Fund any portions of the SISF
30 alternate composite deposit as may be needed to pay those benefits.
31 In making the deposit available to the Self-Insurers' Security Fund,
32 the director shall also allow any amounts as may be reasonably
33 necessary to pay for the administrative and other activities of the
34 fund.

35 (f) The cash portion of the SISF alternate composite deposit
36 shall be segregated from all other funds held by the director, and
37 shall be invested by the director for the sole benefit of the
38 Self-Insurers' Security Fund and the injured workers of private
39 self-insured employers, and may not be used for any other purpose
40 by the state. Alternatively, the director, in his discretion, may allow

1 the Self-Insurers' Security Fund to hold, invest, and draw upon
2 the cash portion of the SISF alternate composite deposit as
3 prescribed by regulation.

4 (g) Notwithstanding any other provision of this section, the
5 director shall, by regulation, set minimum credit, financial, or other
6 conditions that a stand-alone self-insured must meet in order to be
7 a fully participating stand-alone self-insurer in the SISF Alternate
8 Composite Deposit Program. In the event any stand-alone
9 self-insuring employer is unable to meet the conditions set by the
10 director, or upon application of the Self-Insurers' Security Fund
11 to exclude an employer for credit or financial reasons, the director
12 shall exclude the stand-alone self-insuring employer from full
13 participation in the SISF Alternate Composite Deposit Program.
14 In the event a stand-alone self-insuring employer is excluded from
15 full participation, the nonfully participating stand-alone
16 self-insuring employer shall post a separate security deposit in the
17 manner provided by Section 3701 and pay a deposit assessment
18 set by the director. Alternatively, the director may order that the
19 nonfully participating stand-alone self-insuring employer post a
20 separate security deposit to secure a portion of its incurred
21 liabilities and pay a deposit assessment set by the director.

22 (h) An employer whose certificate to self-insure has been
23 revoked may fully participate in the alternative security system if
24 both the director and the Self-Insurers' Security Fund approve the
25 participation of the self-insurer. If not approved for full
26 participation, or if an employer is issued a certificate to self-insure
27 after the composite deposit is posted, the employer shall satisfy
28 the requirements of subdivision (g) for nonfully participating
29 private self-insurers.

30 (i) At all times, a self-insured employer shall have secured its
31 incurred workers' compensation liabilities either in the manner
32 required by Section 3701 or through the SISF Alternate Composite
33 Deposit Program or the SIG Alternate Composite Deposit Program,
34 and there shall not be any lapse in the security.

35 SEC. 7. Section 3701.85 is added to the Labor Code, to read:

36 3701.85. (a) As an alternative to each private SIG securing its
37 own incurred liabilities as provided in Section 3701, the director
38 may provide by regulation for an alternative security system
39 whereby all private SIGs designated for full participation by the
40 director shall collectively secure their aggregate incurred liabilities

1 through the Self-Insured Group Security Fund, which shall be
2 known as the “SIG Alternate Composite Deposit Program.” The
3 regulations shall provide for the director to set a total security
4 requirement for these participating SIGs in the SIG Alternate
5 Composite Deposit Program based on a review of their annual
6 reports and any other self-insurer information as may be specified
7 by the director. ~~The Self-Insured Group Security Fund shall~~
8 ~~propose to the director a combination of cash and securities, surety~~
9 ~~bonds, irrevocable letters of credit, insurance, or other financial~~
10 ~~instruments or guarantees satisfactory to the director sufficient to~~
11 ~~meet the security requirement set by the director. Upon~~ *Unless*
12 *otherwise permitted by regulation, the deposit shall be an amount*
13 *equal to the self-insurer’s project losses, net of specific excess*
14 *insurance coverage, if any, and inclusive of incurred but not*
15 *reported (IBNR) liabilities, allocated loss adjustment expense, and*
16 *unallocated loss adjustment expense, calculated as of December*
17 *31 of each year. The calculation of projected losses and expenses*
18 *shall be reflected in a written actuarial report that projects ultimate*
19 *liabilities of the private self-insured employer at the expected*
20 *actuarial confidence level, to ensure that all claims and associated*
21 *costs are recognized. The written actuarial report shall be prepared*
22 *by an actuary meeting the qualifications prescribed by the director*
23 *in regulation.*

24 (b) *The director may only accept as security, and the employer*
25 *shall deposit as security, cash, securities, surety bonds, or*
26 *irrevocable letters of credit in any combination the director, in his*
27 *or her discretion, deems adequate security. The current deposit*
28 *shall include any amounts covered by terminated surety bonds or*
29 *excess insurance policies, as shall be set forth in regulations by*
30 *the director pursuant to Section 3702.10. Upon approval by the*
31 *director and posting by the Self-Insured Group Security Fund on*
32 *or before the date set by the director, that combination shall be the*
33 *SIG Alternate Composite Deposit. The noncash elements of the*
34 *SIG Alternate Composite Deposit Program may be one-year or*
35 *multiple-year instruments. If the Self-Insured Group Security Fund*
36 *fails to post the required composite deposit by the date set by the*
37 *director, then within 30 days after that date, each private SIG shall*
38 *secure its incurred liabilities in the manner required by Section*
39 *3701. Self-insured SIGs not designated for full participation by*

1 the director shall meet all requirements as may be set by the
2 director pursuant to subdivision ~~(g)~~ (h).

3 ~~(b)~~

4 (c) In order to provide for the SIG alternate composite deposit
5 approved by the director, the Self-Insured Group Security Fund
6 shall assess, in a manner approved by the director, each fully
7 participating private SIG a deposit assessment payable within 30
8 days of assessment. The amount of the deposit assessment charged
9 each fully participating SIG shall be set by the Self-Insured Group
10 Security Fund based on its reasonable consideration of all the
11 following factors:

12 (1) The total amount needed to provide the SIG alternate
13 composite deposit.

14 (2) The SIG's paid or incurred liabilities as reflected in its annual
15 report.

16 (3) The financial strength and creditworthiness of the SIG.

17 (4) Any other reasonable factors as may be authorized by
18 regulation.

19 (5) In order to make a SIG alternate composite deposit proposal
20 to the director and set the deposit assessment to be charged each
21 fully participating SIG, the Self-Insured Group Security Fund shall
22 have access to the annual reports and other information submitted
23 by all SIGs to the director, under terms and conditions as may be
24 set by the director, to preserve the confidentiality of the SIG's
25 financial information.

26 ~~(e)~~

27 (d) Upon payment of the deposit assessment and except as
28 provided herein, the SIG loses all right, title, and interest in the
29 deposit assessment. To the extent that in any one year the deposit
30 assessment paid by SIGs is not exhausted in the purchase of
31 securities, surety bonds, irrevocable letters of credit, insurance, or
32 other financial instruments to post with the director as part of the
33 SIG alternate composite deposit, the surplus shall remain posted
34 with the director, and the principal and interest earned on that
35 surplus shall remain as part of the SIG alternate composite deposit
36 in subsequent years. In the event that in any one year the
37 Self-Insured Group Security Fund fails to post the required SIG
38 alternate composite deposit by the date set the by the director, and
39 the director requires each private SIG to secure its incurred
40 liabilities in the manner required by Section 3701, then any deposit

1 assessment paid in that year shall be refunded to the SIG that paid
2 the deposit assessment.

3 ~~(d)~~

4 (e) If any private SIG objects to the calculation, posting, or any
5 other aspect of its deposit assessment, upon payment of the
6 assessment in the time provided, the employer shall have the right
7 to appeal the assessment to the director, who shall have exclusive
8 jurisdiction over this dispute. If any private SIG fails to pay the
9 deposit assessment in the time provided, the director shall order
10 the SIG to pay a penalty of not less than 10 percent of its deposit
11 assessment, plus interest on any unpaid amount at the prejudgment
12 rate, and to post a separate security deposit in the manner provided
13 by Section 3701. The penalty and interest shall be paid directly to
14 the Self-Insured Group Security Fund. The director may also
15 revoke the certificate of consent to self-insure of any SIG who
16 fails to pay the deposit assessment in the time provided.

17 ~~(e)~~

18 (f) Upon the posting by the Self-Insured Group Security Fund
19 of the SIG alternate composite deposit with the director, the deposit
20 shall be held until the director determines that a private SIG has
21 failed to pay workers' compensation as required by this division,
22 and the director orders the Self-Insured Group Security Fund to
23 commence payment. Upon ordering the Self-Insured Group
24 Security Fund to commence payment, the director shall make
25 available to the fund that portion of the SIG alternate composite
26 deposit necessary to pay the workers' compensation benefits of
27 the defaulting SIG. In the event additional funds are needed in
28 subsequent years to pay the workers' compensation benefits of
29 any self-insuring employer who defaulted in earlier years, the
30 director shall make available to the Self-Insured Group Security
31 Fund any portions of the SIG alternate composite deposit as may
32 be needed to pay those benefits. In making the deposit available
33 to the Self-Insured Group Security Fund, the director shall also
34 allow any amounts as may be reasonably necessary to pay for the
35 administrative and other activities of the fund.

36 ~~(f)~~

37 (g) The cash portion of the SIG alternate composite deposit
38 shall be segregated from all other funds held by the director, and
39 shall be invested by the director for the sole benefit of the
40 Self-Insured Group Security Fund and the injured workers of

1 self-insured employers, and may not be used for any other purpose
2 by the state. Alternatively, the director, in his discretion, may allow
3 the Self-Insured Group Security Fund to hold, invest, and draw
4 upon the cash portion of the SIG alternate composite deposit as
5 prescribed by regulation.

6 ~~(g)~~

7 *(h)* Notwithstanding any other provision of this section, the
8 director shall, by regulation, set minimum credit, financial, or other
9 conditions that a private SIG must meet in order to be a fully
10 participating SIG in the SIG Alternate Composite Deposit Program.
11 In the event any private SIG is unable to meet the conditions set
12 by the director, or upon application of the Self-Insured Group
13 Security Fund to exclude an employer for credit or financial
14 reasons, the director shall exclude the SIG from full participation
15 in the SIG Alternate Composite Deposit Program. In the event a
16 SIG is excluded from full participation, the nonfully participating
17 private SIG shall post a separate security deposit in the manner
18 provided by Section 3701 and pay a deposit assessment set by the
19 director. Alternatively, the director may order that the nonfully
20 participating private SIG post a separate security deposit to secure
21 a portion of its incurred liabilities and pay a deposit assessment
22 set by the director.

23 ~~(h)~~

24 *(i)* An employer whose certificate to self-insure has been
25 revoked may fully participate in the alternative security system if
26 both the director and the Self-Insured Group Security Fund approve
27 the participation of the self-insurer. If not approved for full
28 participation, or if an employer is issued a certificate to self-insure
29 after the composite deposit is posted, the employer shall satisfy
30 the requirements of subdivision-~~(g)~~ *(h)* for nonfully participating
31 private self-insurers.

32 ~~(i)~~

33 *(j)* At all times, a self-insured employer shall have secured its
34 incurred workers' compensation liabilities either in the manner
35 required by Section 3701, through the SISF Alternate Composite
36 Deposit Program or through the SIG Alternate Composite Deposit
37 Program, and there shall not be any lapse in the security.

38 SEC. 8. Section 3702 of the Labor Code is amended to read:

39 3702. (a) A certificate of consent to self-insure may be revoked
40 by the director at any time for good cause after a hearing. Good

1 cause includes, among other things, a recommendation by the
2 Self-Insurers' Security Fund to revoke the certificate of consent,
3 a recommendation by the SIG Fund to revoke the certificate of
4 consent, the impairment of the solvency of the employer to the
5 extent that there is a marked reduction of the employer's financial
6 strength, failure to maintain a security deposit as required by
7 Section 3701, failure to pay assessments of the Self-Insurers'
8 Security Fund or the SIG Fund, frequent or flagrant violations of
9 state safety and health orders, the failure or inability of the
10 employer to fulfill his or her obligations, or any of the following
11 practices by the employer or his or her agent in charge of the
12 administration of obligations under this division:

13 (1) Habitually and as a matter of practice and custom inducing
14 claimants for compensation to accept less than the compensation
15 due or making it necessary for them to resort to proceedings against
16 the employer to secure compensation due.

17 (2) Where liability for temporary disability indemnity is not in
18 dispute, intentionally failing to pay temporary disability indemnity
19 without good cause in order to influence the amount of permanent
20 disability benefits due.

21 (3) Intentionally refusing to comply with known and legally
22 indisputable compensation obligations.

23 (4) Discharging or administering his or her compensation
24 obligations in a dishonest manner.

25 (5) Discharging or administering his or her compensation
26 obligations in such a manner as to cause injury to the public or
27 those dealing with the employer.

28 (b) Where revocation is in part based upon the director's finding
29 of a marked reduction of the employer's financial strength or the
30 failure or inability of the employer to fulfill his or her obligations,
31 or a practice of discharging obligations in a dishonest manner, it
32 is a condition precedent to the employer's challenge or appeal of
33 the revocation that the employer have in effect insurance against
34 liability to pay compensation.

35 (c) The director may hold a hearing to determine whether good
36 cause exists to revoke an employer's certificate of consent to
37 self-insure if the employer is cited for a willful, or repeat serious
38 violation of the standard adopted pursuant to Section 6401.7 and
39 the citation has become final.

40 SEC. 9. Section 3702.5 of the Labor Code is amended to read:

1 3702.5. (a) (1) The cost of administration of the public
2 self-insured program by the Director of Industrial Relations shall
3 be borne by the Workers' Compensation Administration Revolving
4 Fund.

5 (2) The cost of administration of the private self-insured program
6 by the Director of Industrial Relations shall be borne by the private
7 self-insurers through payment of certificate fees which shall be
8 established by the director in broad ranges based on the
9 comparative numbers of employees insured by the private
10 self-insurers and the number of adjusting locations. The director
11 may assess other fees as necessary to cover the costs of special
12 audits or services rendered to private self-insured employers. The
13 director may assess a civil penalty for late filing as set forth in
14 subdivision (a) of Section 3702.9.

15 (b) All revenues from fees and penalties paid by private
16 self-insured employers shall be deposited into the Self-Insurance
17 Plans Fund, which is hereby created for the administration of the
18 private self-insurance program. Any unencumbered balance in
19 subdivision (a) of Item 8350-001-001 of the Budget Act of 1983
20 shall be transferred to the Self-Insurance Plans Fund. The director
21 shall annually eliminate any unused surplus in the Self-Insurance
22 Plans Fund by reducing certificate fee assessments by an
23 appropriate amount in the subsequent year. Moneys paid into the
24 Self-Insurance Plans Fund for administration of the private
25 self-insured program shall not be used by any other department or
26 agency or for any purpose other than administration of the private
27 self-insurance program. Detailed accountability shall be maintained
28 by the director for any security deposit or other funds held in trust
29 for the Self-Insurer's Security Fund and the SIG Fund in the
30 Self-Insurance Plans Fund.

31 (c) Moneys held by the director shall be invested in the Surplus
32 Money Investment Fund. Interest shall be paid on all moneys
33 transferred to the General Fund in accordance with Section 16310
34 of the Government Code. The Treasurer's and Controller's
35 administrative costs may be charged to the interest earnings upon
36 approval of the director.

37 SEC. 10. Section 3702.8 of the Labor Code is amended to read:

38 3702.8. (a) Employers who have ceased to be self-insured
39 employers shall discharge their continuing obligations to secure
40 the payment of workers' compensation that accrued during the

1 period of self-insurance, for purposes of Sections 3700, 3700.5,
2 3706, and 3715, and shall comply with all of the following
3 obligations of current certificate holders:

4 (1) Filing annual reports as deemed necessary by the director
5 to carry out the requirements of this chapter.

6 (2) In the case of a private employer, depositing and maintaining
7 a security deposit for accrued liability for the payment of any
8 workers' compensation that may become due, pursuant to
9 subdivision (b) of Section 3700 and Section 3701, except as
10 provided in subdivision (c).

11 (3) Paying within 30 days all assessments of which notice is
12 sent, pursuant to subdivision (b) of Section 3745, within 36 months
13 from the last day the employer's certificate of self-insurance was
14 in effect. Assessments shall be based on the benefits paid by the
15 employer during the last full calendar year of self-insurance on
16 claims incurred during that year.

17 (b) In addition to proceedings to establish liabilities and penalties
18 otherwise provided, a failure to comply may be the subject of a
19 proceeding before the director. An appeal from the director's
20 determination shall be taken to the appropriate superior court by
21 petition for writ of mandate.

22 (c) Notwithstanding subdivision (a), any employer who is
23 currently self-insured or who has ceased to be self-insured may
24 purchase a special excess workers' compensation policy to
25 discharge any or all of the employer's continuing obligations as a
26 self-insurer to pay compensation or to secure the payment of
27 compensation.

28 (1) The special excess workers' compensation insurance policy
29 shall be issued by an insurer authorized to transact workers'
30 compensation insurance in this state.

31 (2) Each carrier's special excess workers' compensation policy
32 shall be approved as to form and substance by the Insurance
33 Commissioner, and rates for special excess workers' compensation
34 insurance shall be subject to the filing requirements set forth in
35 Section 11735 of the Insurance Code.

36 (3) Each special excess workers' compensation insurance policy
37 shall be submitted by the employer to the director. The director
38 shall adopt and publish minimum insurer financial rating standards
39 for companies issuing special excess workers' compensation
40 policies.

1 (4) Upon acceptance by the director, a special excess workers'
2 compensation policy shall provide coverage for all or any portion
3 of the purchasing employer's claims for compensation arising out
4 of injuries occurring during the period the employer was
5 self-insured in accordance with Sections 3755, 3756, and 3757 of
6 the Labor Code and Sections 11651 and 11654 of the Insurance
7 Code. The director's acceptance shall discharge the Self-Insurer's
8 Security Fund in the case of a stand-alone self-insurer, or the SIG
9 Fund in the case of a SIG, without recourse or liability to the
10 Self-Insurer's Security Fund or the SIG Fund, of any continuing
11 liability for the claims covered by the special excess workers'
12 compensation insurance policy.

13 (5) For public employers, no security deposit or financial
14 guarantee bond or other security shall be required. The director
15 shall set minimum financial rating standards for insurers issuing
16 special excess workers' compensation policies for public
17 employers.

18 (d) (1) In order for the special excess workers' compensation
19 insurance policy to discharge the full obligations of a private
20 employer to maintain a security deposit with the director for the
21 payment of self-insured claims, applicable to the period to be
22 covered by the policy, the special excess policy shall provide
23 coverage for all claims for compensation arising out of that
24 liability. The employer shall maintain the required deposit for the
25 period covered by the policy with the director for a period of three
26 years after the issuance date of the special excess policy.

27 (2) If the special workers' compensation insurance policy does
28 not provide coverage for all of the continuing obligations for which
29 the private self-insured employer is liable, to the extent the
30 employer's obligations are not covered by the policy a private
31 employer shall maintain the required deposit with the director. In
32 addition, the employer shall maintain with the director the required
33 deposit for the period covered by the policy for a period of three
34 years after the issuance date of the special excess policy.

35 (e) The director shall adopt regulations pursuant to Section
36 3702.10 that are reasonably necessary to implement this section
37 in order to reasonably protect injured workers, employers, the
38 Self-Insurers' Security Fund, the SIG Fund, and the California
39 Insurance Guarantee Association.

(f) The posting of a special excess workers' compensation insurance policy with the director shall discharge the obligation of the Self-Insurer's Security Fund pursuant to Section 3744 to pay claims in the event of an insolvency of a private employer to the extent of coverage of compensation liabilities under the special excess workers' compensation insurance policy. The California Insurance Guarantee Association, the Self-Insurers' Security Fund, or the SIG Fund, as appropriate, shall be advised by the director whenever a special excess workers' compensation insurance policy is posted.

SEC. 11. Section 3702.10 of the Labor Code is amended to read:

3702.10. The director, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, may adopt, amend, and repeal rules and regulations reasonably necessary to carry out the purposes of Section 129 and Article 1 (commencing with Section 3700), Article 2 (commencing with Section 3710), and Article 2.5 (commencing with Section 3740). This authorization includes, but is not limited to, the adoption of regulations to do all of the following:

(a) Specifying what constitutes ability to self-insure and to pay any compensation which may become due under Section 3700.

(b) Specifying what constitutes a marked reduction of an employer's financial strength.

(c) Specifying what constitutes a failure or inability to fulfill the employer's obligations under Section 3702.

(d) Interpreting and defining the terms used.

(e) Establishing procedures and standards for hearing and determinations, and providing for those determinations to be appealed to the appeals board.

(f) Specifying the standards, form, and content of agreements, forms, and reports between parties who have obligations pursuant to this chapter.

(g) Providing for the combinations and relative liabilities of security deposits, assumptions, and guarantees used pursuant to this chapter.

(h) Disclosing otherwise confidential financial information concerning self-insureds to the court, the Self-Insurers' Security Fund, or the SIG Fund, and specifying appropriate safeguards for that information.

1 (i) Requiring an amount to be added to each security deposit to
2 secure the cost of administration of claims and to pay all legal
3 costs.

4 (j) Regulating the workers' compensation self-insurance
5 obligations of self-insurance groups and professional employer
6 organizations, leasing employers as defined in Section 606.5 of
7 the Unemployment Insurance Code, or temporary services
8 employers, as defined in Section 606.5 of the Unemployment
9 Insurance Code, holding certificates of consent to self-insure.

10 SEC. 12. Section 3740 of the Labor Code is amended and
11 renumbered to read:

12 3740.5. It is the intent of the Legislature in enacting this article
13 and Article 1 (commencing with Section 3700) to provide for the
14 continuation of workers' compensation benefits delayed due to
15 the failure of a private stand-alone self-insured employer or a SIG
16 to meet its compensation obligations when the employers' security
17 deposit is either inadequate or not immediately accessible for the
18 payment of benefits. With respect to the continued liability of a
19 surety for claims that arose under a bond after termination of that
20 bond and to a surety's liability for the cost of administration of
21 claims, it is the intent of the Legislature to clarify existing law.
22 The Legislature finds and declares that the establishment of two
23 security funds, the Self-Insurers' Security Fund for stand-alone
24 self-insured employers and the Self-Insured Group Security Fund
25 for groups of self-insured employers is a necessary component of
26 a complete system of workers' compensation, required by Section
27 4 of Article XIV of the California Constitution, to have adequate
28 provisions for the comfort, health and safety, and general welfare
29 of any and all workers and their dependents to the extent of
30 relieving the consequences of any industrial injury or death, and
31 full provision for securing the payment of compensation.

32 SEC. 13. Section 3740 is added to the Labor Code, to read:

33 3740. The Legislature finds and declares as follows:

34 (a) A Self-Insured Group is a nonprofit mutual benefit
35 corporation whose members have transferred their primary
36 workers' compensation liabilities to the SIG.

37 (b) Group self-insurance is different from stand-alone
38 self-insurance because group self-insurance involves the transfer
39 of the primary risk of an occurrence from one entity to another.

1 (c) Members of SIG are jointly and severally liable for the
2 amounts required to pay the workers' compensation liabilities of
3 all the members of the group, and they may be assessed to cover
4 any shortfall in the group even if their own experience is loss free,
5 a scenario sometimes called "last man standing."

6 (d) SIGs have the potential to serve the interests of California
7 employers and employees by promptly providing workers'
8 compensation benefits to injured workers at reasonable cost while
9 enabling and encouraging employers to improve safety and provide
10 the earliest appropriate return to work for injured employees.

11 (e) Smaller employers may generally receive the benefits of
12 self-insurance only through membership in a SIG because SIG
13 members do not have to prove their capacity to individually pay
14 their liabilities.

15 (f) SIGs have become an integral part of California's workers'
16 compensation system, providing coverage for more than 4,500
17 employers, 350,000 employees, and \$4.8 billion in payroll.

18 (g) The expansion and increased availability of group
19 self-insurance will further stabilize and facilitate the funding of
20 workers' compensation benefits.

21 (h) SIGs involve a lower risk of default than individual
22 self-insurance because there is recourse to the members of the SIG
23 for the recovery of assessments to pay unfunded workers'
24 compensation liabilities.

25 (i) A separate security fund will allow different risk pools for
26 SIGs and stand-alone self-insured employers.

27 (j) Providing a separate security fund for SIGs will facilitate
28 the development of distinct techniques for assessing and responding
29 to the risks that SIGs bring to their security fund.

30 (k) The pooling of risk among SIGs in a separate security fund
31 will have the salutary effect of promoting higher standards for
32 SIGs because each SIG will have a stronger interest in assuring
33 the financial integrity of all SIGs.

34 SEC. 14. Section 3741 of the Labor Code is amended to read:

35 3741. As used in this article:

36 (a) "Director" means the Director of Industrial Relations.

37 (b) "Fund" means the Self-Insurers' Security Fund established
38 pursuant to Section 3742.

39 (c) "Fund member" means a stand-alone self-insured employer
40 which participates in the Self-Insurers' Security Fund.

1 (d) “Fund trustees” means the Board of Trustees of the
2 Self-Insurers’ Security Fund.

3 (e) “Insolvent SIG” means a SIG whose certificate of consent
4 to self-insure has been revoked by the director, or who has failed
5 to pay compensation, or whose security deposit has been called
6 by the director pursuant to Section 3701.5.

7 (f) “Insolvent self-insurer” means a stand-alone self-insurer
8 whose certificate of consent to self-insure has been revoked by the
9 director, or who has failed to pay compensation, or whose security
10 deposit has been called by the director pursuant to Section 3701.5.

11 (g) “Private self-insurer” and “private self-insured employer”
12 mean any employer that has been issued a certificate of consent
13 to self-insure by the director, whether as a stand-alone self-insured
14 employer or as a member of a SIG and has secured the payment
15 of compensation pursuant to subdivision (b) of Section 3700.

16 (h) “SIG” means a nonprofit mutual benefit corporation to which
17 a group of private self-insured employers have transferred primary
18 liability for their workers’ compensation obligations and have
19 secured the payment of compensation pursuant to subdivision (b)
20 of Section 3700.

21 (i) “SIG Fund” means the Self-Insured Group Security Fund
22 established pursuant to Section 3742.5.

23 (j) “SIG Fund member” means a SIG which participates in the
24 SIG Fund.

25 (k) “SIG Fund trustees” means the Board of Trustees of the SIG
26 Fund.

27 (l) “Stand-alone self-insured employer” and “stand-alone
28 self-insured” mean a private employer that retains primary liability
29 for its own worker’s compensation obligations, whether alone or
30 in connection with guarantors, and has secured the payment of
31 compensation pursuant to subdivision (b) of Section 3700.

32 SEC. 15. Section 3742 of the Labor Code is amended to read:

33 3742. (a) The Self-Insurers’ Security Fund shall be established
34 as a Nonprofit Mutual Benefit Corporation pursuant to Part 3
35 (commencing with Section 7110) of Division 2 of Title 1 of the
36 Corporations Code and this article. If any provision of the
37 Nonprofit Mutual Benefit Corporation Law conflicts with any
38 provision of this article, the provisions of this article shall apply.
39 Each stand-alone self-insured employer shall participate as a
40 member in the fund, unless its liabilities have been turned over to

1 the fund pursuant to Section 3701.5, at which time its membership
2 in the fund is relinquished.

3 (b) The fund shall be governed by a board of trustees with no
4 more than eight members, as established by the bylaws of the
5 Self-Insurers' Security Fund. The director shall hold ex officio
6 status, with full powers equal to those of a trustee, except that the
7 director shall not have a vote. The director, or a delegate authorized
8 in writing to act as the director's representative on the board of
9 trustees, shall carry out exclusively the responsibilities set forth
10 in Division 1 (commencing with Section 50) through Division 4
11 (commencing with Section 3200) and shall not have the obligations
12 of a trustee under the Nonprofit Mutual Benefit Corporation Law.
13 The fund shall adopt bylaws to segregate the director from all
14 matters that may involve fund litigation against the department or
15 fund participation in legal proceedings before the director.
16 Although not voting, the director or a delegate authorized in writing
17 to represent the director, shall be counted toward a quorum of
18 trustees. The remaining trustees shall be representatives of private
19 self-insurers. The self-insurer trustees shall be elected by the
20 members of the fund, each member having one vote. Trustees shall
21 be elected to four-year terms, and shall serve until their successors
22 are elected and assume office pursuant to the bylaws of the fund.

23 (c) The fund shall establish bylaws as are necessary to effectuate
24 the purposes of this article and to carry out the responsibilities of
25 the fund, including, but not limited to, any obligations imposed
26 by the director pursuant to Section 3701.8. The fund may carry
27 out its responsibilities directly or by contract, and may purchase
28 services and insurance and borrow funds as it deems necessary for
29 the protection of the members and their employees. The fund may
30 receive confidential information concerning the financial condition
31 of self-insured employers whose liabilities to pay compensation
32 may devolve upon it and shall adopt bylaws to prevent
33 dissemination of that information.

34 (d) The director may also require fund members to subscribe
35 to financial instruments or guarantees to be posted with the director
36 in order to satisfy the security requirements set by the director
37 pursuant to Section 3701.8.

38 SEC. 16. Section 3742.5 is added to the Labor Code, to read:

39 3742.5. (a) The Self-Insured Group Security Fund shall be
40 established as a Nonprofit Mutual Benefit Corporation pursuant

1 to Part 3 (commencing with Section 7110) of Division 2 of Title
2 1 of the Corporations Code and this article. If any provision of the
3 Nonprofit Mutual Benefit Corporation Law conflicts with any
4 provision of this article, the provisions of this article shall apply.
5 Each SIG shall participate as a member in the SIG Fund as a
6 condition of maintaining its certificate of consent to self-insure.

7 (b) The SIG Fund shall be governed by a seven-member board
8 of trustees and shall include the director ex officio, with full powers
9 equal to those of a trustee, except that the director shall not have
10 a vote. The director, or a delegate authorized in writing to act as
11 the director's representative on the board of trustees, shall carry
12 out exclusively the responsibilities set forth in Division 1
13 (commencing with Section 50) through Division 4 (commencing
14 with Section 3200), inclusive, and shall not have the obligations
15 of a trustee under the Nonprofit Mutual Benefit Corporation Law.
16 The SIG Fund shall adopt bylaws to segregate the director from
17 all matters that may involve SIG Fund litigation against the
18 department or SIG Fund participation in legal proceedings before
19 the director. Although not voting, the director or a delegate
20 authorized in writing to represent the director, shall be counted
21 toward a quorum of trustees. Three of the remaining six trustees
22 shall be representatives selected from individual SIG boards of
23 trustees and three shall be representatives of SIG administrators.
24 The six trustees shall be elected by the SIG Fund members, each
25 SIG Fund member having one vote. The three SIG Fund trustees
26 selected from the SIG boards and initially elected by the members
27 shall serve two-year terms, and the three SIG administrator SIG
28 Fund trustees shall serve four-year terms. Thereafter, SIG Fund
29 trustees selected from SIG boards shall be elected to two-year
30 terms, and the SIG Fund trustees selected from the SIG
31 administrators shall be elected to four-year terms and shall serve
32 until their successors are elected and assume office pursuant to the
33 bylaws of the SIG Fund.

34 (c) The SIG Fund shall establish bylaws as are necessary to
35 effectuate the purposes of this article and to carry out the
36 responsibilities of the SIG Fund, including, but not limited to, any
37 obligations imposed by the director pursuant to Section 3701.8.
38 The SIG Fund may carry out its responsibilities directly or by
39 contract, and may purchase services and insurance and borrow
40 funds as it deems necessary for the protection of the SIG Fund

1 members and their employees. The SIG Fund may receive
2 confidential information concerning the financial condition of
3 self-insured employers whose liabilities to pay compensation may
4 devolve upon it and shall adopt bylaws to prevent dissemination
5 of that information.

6 (d) The director may also require SIG Fund members to
7 subscribe to financial instruments or guarantees to be posted with
8 the director in order to satisfy the security requirements set by the
9 director pursuant to Section 3701.8.

10 SEC. 17. Section 3743 of the Labor Code is amended to read:

11 3743. (a) Upon order of the director pursuant to Section
12 3701.5, the fund shall assume the workers' compensation
13 obligations of an insolvent self-insurer.

14 (b) Notwithstanding subdivision (a), the fund shall not be liable
15 for the payment of any penalties assessed for any act or omission
16 on the part of any person other than the fund, including, but not
17 limited to, the penalties provided in Section 132a, 3706, 4553,
18 4554, 4556, 4557, 4558, 4601.5, 5814, or 5814.1.

19 (c) The fund shall be a party in interest in all proceedings
20 involving compensation claims against an insolvent self-insurer
21 whose compensation obligations have been paid or assumed by
22 the fund. The fund shall have the same rights and defenses as the
23 insolvent self-insurer, including, but not limited to, all of the
24 following:

25 (1) To appear, defend, and appeal claims.

26 (2) To receive notice of, investigate, adjust, compromise, settle,
27 and pay claims.

28 (3) To investigate, handle, and deny claims.

29 (d) This section shall remain in effect only until July 1, 2014,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before July 1, 2014, deletes or extends that date.

32 SEC. 18. Section 3743 is added to the Labor Code, to read:

33 3743. (a) Upon order of the director pursuant to Section
34 3701.5, the fund shall assume the workers' compensation
35 obligations of an insolvent stand-alone self-insurer.

36 (b) Upon order of the director pursuant to Section 3701.5, the
37 SIG Fund shall assume the workers' compensation obligations of
38 an insolvent SIG.

39 (c) Notwithstanding subdivision (a), neither the fund nor the
40 SIG Fund shall be liable for the payment of any penalties assessed

1 for any act or omission on the part of any person other than the
2 fund or the SIG Fund, respectively, including, but not limited to,
3 the penalties provided in Section 132a, 3706, 4553, 4554, 4556,
4 4557, 4558, 4601.5, 5814, or 5814.1.

5 (d) The fund shall be a party in interest in all proceedings
6 involving compensation claims against an insolvent stand-alone
7 self-insurer whose compensation obligations have been paid or
8 assumed by the fund. The fund shall have the same rights and
9 defenses as the insolvent self-insurer, including, but not limited
10 to, all of the following:

- 11 (1) To appear, defend, and appeal claims.
- 12 (2) To receive notice of, investigate, adjust, compromise, settle,
13 and pay claims.
- 14 (3) To investigate, handle, and deny claims.

15 (e) The SIG Fund shall be a party in interest in all proceedings
16 involving compensation claims against an insolvent self-insured
17 group whose compensation obligations have been paid or assumed
18 by the SIG Fund. The SIG Fund shall have the same rights and
19 defenses as the insolvent self-insurer, including, but not limited
20 to, all of the following:

- 21 (1) To appear, defend, and appeal claims.
- 22 (2) To receive notice of, investigate, adjust, compromise, settle,
23 and pay claims.
- 24 (3) To investigate, handle, and deny claims.

25 (f) The Self-Insurer's Security Fund shall retain the workers'
26 compensation obligations for every self-insured employer and SIG
27 that either became insolvent, or was issued a notice of intent to
28 revoke its certificate of consent to self-insure by the director, before
29 July 1, 2014.

30 (g) This section shall become operative on July 1, 2014.

31 SEC. 19. Section 3744 of the Labor Code is amended to read:

32 3744. (a) (1) The fund shall have the right and obligation to
33 obtain reimbursement from an insolvent stand-alone self-insurer
34 up to the amount of the self-insurer's workers' compensation
35 obligations paid and assumed by the fund, including reasonable
36 administrative and legal costs. This right includes, but is not limited
37 to, a right to claim for wages and other necessities of life advanced
38 to claimants as subrogee of the claimants in any action to collect
39 against the self-insured as debtor. For purposes of this section,
40 "insolvent stand-alone self-insurer" includes the entity to which

1 the certificate of consent to self-insure was issued, any guarantor
2 of the entity's liabilities under the certificate, any member of a
3 self-insurance group to which the certificate was issued, and any
4 employer who obtained employees from a self-insured employer
5 under subdivision (d) of Section 3602.

6 (2) The Legislature finds and declares that the amendments
7 made to this subdivision by the act adding this paragraph are
8 declaratory of existing law.

9 (b) The SIG Fund shall have the right and obligation to obtain
10 reimbursement from every member of the insolvent SIG, jointly
11 and severally, up to the amount of the self-insurer's workers'
12 compensation obligations paid and assumed by the SIG Fund,
13 including reasonable administrative and legal costs. This right
14 includes, but is not limited to, a right to claim for wages and other
15 necessities of life advanced to claimants as subrogee of the
16 claimants in any action to collect against the self-insured as debtor.

17 (c) The fund shall have the right and obligation to obtain from
18 the security deposit of an insolvent stand-alone self-insurer the
19 amount of the self-insurer's compensation obligations, including
20 reasonable administrative and legal costs, paid or assumed by the
21 fund. Reimbursement of administrative costs, including legal costs,
22 shall be subject to approval by a majority vote of the fund's
23 trustees. The fund shall be a party in interest in any action to obtain
24 the security deposit for the payment of compensation obligations
25 of an insolvent stand-alone self-insurer.

26 (d) The SIG Fund shall have the right and obligation to obtain
27 from the security deposit of an insolvent SIG the amount of the
28 SIG's compensation obligations, including reasonable
29 administrative and legal costs, paid or assumed by the SIG Fund.
30 Reimbursement of administrative costs, including legal costs, shall
31 be subject to approval by a majority vote of the SIG Fund's
32 trustees. The SIG Fund shall be a party in interest in any action to
33 obtain the security deposit for the payment of compensation
34 obligations of an insolvent self-insurer.

35 (e) The fund shall have the right to bring an action against any
36 person to recover compensation paid and liability assumed by the
37 fund, including, but not limited to, any excess insurance carrier of
38 the self-insured employer, and any person whose negligence or
39 breach of any obligation contributed to any underestimation of the

1 stand-alone self-insured employer's total accrued liability as
2 reported to the director.

3 (f) The SIG Fund shall have the right to bring an action against
4 any person to recover compensation paid and liability assumed by
5 the SIG Fund, including, but not limited to, any excess insurance
6 carrier of the self-insured employer, and any person whose
7 negligence or breach of any obligation contributed to any
8 underestimation of the SIG's total accrued liability as reported to
9 the director.

10 (g) The fund may be a party in interest in any action brought
11 by any other person seeking damages resulting from the failure of
12 an insolvent stand-alone self-insurer to pay workers' compensation
13 required pursuant to this division.

14 (h) The SIG Fund may be a party in interest in any action
15 brought by any other person seeking damages resulting from the
16 failure of an insolvent SIG to pay workers' compensation required
17 pursuant to this division.

18 (i) At the election of the Self-Insurers' Security Fund, venue
19 shall be in the Superior Court for the State of California, County
20 of Sacramento, for any action under this section. All actions in
21 which the Self-Insurers' Security Fund and two or more members
22 or former members of one self-insurance group are parties shall
23 be consolidated if requested by the Self-Insurers' Security Fund.

24 (j) At the election of the SIG Security Fund, venue shall be in
25 the Superior Court for the State of California, County of
26 Sacramento, for any action under this section. All actions in which
27 the SIG Security Fund and two or more members or former
28 members of one self-insurance group are parties shall be
29 consolidated if requested by the SIG Security Fund.

30 SEC. 20. Section 3745 of the Labor Code is amended to read:

31 3745. (a) The fund and the SIG Fund shall each maintain cash,
32 readily marketable securities, or other assets, or a line of credit,
33 approved by the director, sufficient to immediately continue the
34 payment of the compensation obligations of an insolvent
35 stand-alone self-insurer or insolvent SIG pending assessment of
36 the members. The director may establish the minimum amount to
37 be maintained by, or immediately available to, the fund for this
38 purpose.

39 (b) The fund may assess each of its members a pro rata share
40 of the funding necessary to carry out the purposes of this article.

1 Funds obtained by assessments pursuant to this subdivision may
2 only be used for the purposes of this article.

3 (c) The SIG Fund may assess each of its members a pro rata
4 share of the funding necessary to carry out its obligations and the
5 purposes of this article. However, no member shall be assessed at
6 one time in excess of 1.5 percent of the benefits paid by the
7 member for claims incurred during the previous calendar year as
8 a self-insurer, and total annual assessments in any calendar year
9 shall not exceed 2 percent of the benefits paid for claims incurred
10 during the previous calendar year. Funds obtained by assessments
11 pursuant to this subdivision may only be used for the purposes of
12 this article.

13 (d) The fund trustees shall certify to the director the collection
14 and receipt of all moneys from assessments, noting any
15 delinquencies. The fund trustees shall take any action deemed
16 appropriate to collect any delinquent assessments.

17 (e) The SIG Fund trustees shall certify to the director the
18 collection and receipt of all moneys from assessments, noting any
19 delinquencies. The SIG Fund trustees shall take any action deemed
20 appropriate to collect any delinquent assessments.

21 (f) All initial assessments payable to the SIG Fund shall be due
22 and payable by May 1, 2014.

23 SEC. 21. Section 3746 of the Labor Code is amended to read:

24 3746. (a) The fund shall annually contract for an independent
25 certified audit of the financial activities of the fund. An annual
26 report on the financial status of the fund as of June 30 shall be
27 submitted to the director and to each member, or at the election of
28 the fund, posted on the fund's Internet Web site.

29 (b) The SIG Fund trustees shall annually contract for an
30 independent certified audit of the financial activities of the SIG
31 Fund. An annual report on the financial status of the SIG Fund as
32 of June 30 shall be submitted to the director and to each SIG Fund
33 member.